

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

	x	
	:	
UNITED STATES OF AMERICA,	:	Criminal Action
	:	
Plaintiff,	:	No. 2:14-cr-00109
	:	
v.	:	
	:	Date: July 9, 2014
GARY L. ROEHER,	:	
	:	
Defendant.	:	
	x	

TRANSCRIPT OF PLEA HEARING HELD
BEFORE THE HONORABLE THOMAS E. JOHNSTON, JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

APPEARANCES:

For the Government: AUSA MEREDITH GEORGE THOMAS
 U.S. Attorney's Office
 P.O. Box 1713
 Charleston, WV 25326-1713

For the Defendant: J. TIMOTHY DIPIERO, ESQ.
 DiTrapano Barrett & Dipiero
 604 Virginia Street East
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Probation Officer: Joshua Smith-Shimer

Court Reporter: Ayme Cochran, RMR, CRR

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 PROCEEDINGS had before The Honorable Thomas E. Johnston,
2 Judge, United States District Court, Southern District of West
3 Virginia, in Charleston, West Virginia, on July 9, 2014, at 9:16
4 a.m., as follows:

5 COURTROOM DEPUTY CLERK: The matter before the Court is
6 the United States of America versus Gary L. Roeher, scheduled for
7 a plea hearing.

8 THE COURT: Good morning. Will counsel please note
9 their appearances?

10 MS. THOMAS: Meredith George Thomas on behalf of the
11 United States.

12 MR. DIPIERO: Tim DePiero on behalf of Mr. Gary Roeher,
13 who is also present, Your Honor.

14 THE COURT: Good morning. Mr. Roeher, will you please
15 stand, and I will ask the deputy clerk to administer an oath to
16 you at this time.

17 COURTROOM DEPUTY CLERK: Please raise your right hand.

18 **GARY L. ROEHER, DEFENDANT, SWORN**

19 THE COURT: You may be seated.

20 Mr. Roeher, do you understand that you are now under oath
21 and you must tell truth and, if you testify falsely, you may face
22 prosecution for perjury or for making a false statement?

23 THE DEFENDANT: I do, yes, sir.

24 THE COURT: All right. Throughout the course of this
25 hearing, I'm going to be asking you a number of questions and I

1 want to make sure that you and I are communicating clearly. So,
2 if at any time I ask a question that you don't understand, or
3 anything else occurs in this hearing you don't understand, I want
4 you to feel free to speak up and seek clarification.

5 Also, if at any time you need to confer with your attorney,
6 I'll be pleased to pause the proceedings to allow you to do so.
7 Do you understand all that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. Before we get into the hearing
10 itself, my understanding, Mr. DiPiero, is that of these ten cases
11 that I'm going to be taking pleas on over the next few weeks,
12 that you represent four of the defendants, and I think I need to
13 explore that a little bit.

14 I don't -- obviously, there's some relationship among these
15 cases and I don't -- at this point, I don't know much about those
16 relationships but, obviously, that presents at least a potential,
17 a theoretical potential, for conflict of interest.

18 I need to tell you that, although this isn't the legal
19 standard, obviously, I've only had to deal with this issue once
20 before so far in my career on the bench. A lawyer represented
21 two -- they were either brothers or cousins. There were waivers.
22 The lawyer assured me there would be no problem. The AUSA
23 assured me there would be no problem. In the end, there was a
24 problem.

25 So, the problem from my perspective right now, is how I size

1 that up. I think that the lawyers are taking a risk sizing that
2 up, up front, because you just never know what's going to happen,
3 but I have a -- I have a brief colloquy that I think -- I think
4 that I'd like to go through.

5 I'm not so sure that Rule 44(c) technically applies because
6 none of these -- these defendants are all charged in separate
7 cases. Nonetheless, the -- and I'll just -- I'll just start with
8 it this way.

9 Mr. Roeher, you have a right to effective assistance of
10 counsel and I say that in no -- by no means implying that Mr.
11 DiPiero is anything other than effective. He is a very
12 experienced and a very good criminal defense attorney, but that
13 the right to effective assistance of counsel also includes the
14 right to separate legal representation and representation that
15 does not involve a conflict of interest, or the potential for a
16 conflict of interest, and I'm aware that Mr. DiPiero, as I
17 indicated earlier, represents three other defendants in these --
18 this related set of cases.

19 So, Mr. DiPiero, at this time, I'm going to ask you to place
20 on the record the -- I want you to tell me the facts and
21 circumstances that -- and I understand that you have a waiver.

22 MR. DIPIERO: Yes, sir.

23 THE COURT: Which I would like to see, at some point,
24 but I'd like for you to explain to me the facts and circumstances
25 surrounding your representation of these four defendants and why

1 you believe that there's not a conflict of interest, or a
2 potential conflict of interest, is unlikely.

3 And, Mr. Roeher, I want you to listen to this discussion
4 very carefully.

5 MR. DIPIERO: Your Honor, this is a highly unusual
6 situation for me, as well. I have -- I've represented a couple
7 of people in the past and oftentimes it's been family related, so
8 it's been an easy waiver.

9 I guess just to -- just how this whole thing started was --

10 THE COURT: Before you go further, I meant to ask you,
11 Mr. DiPiero, is there any reason you think we ought to have this
12 discussion in-camera?

13 MR. DIPIERO: Not really, no, sir. I don't think so.

14 THE COURT: All right.

15 MR. DIPIERO: I don't think so. Our firm, one of our
16 partners was actually representing Mr. Alvis Porter a couple of
17 years ago in a civil matter. During that time, Mr. Porter was in
18 a terrible accident where a guy was going the wrong way on the
19 corridor between Logan and Williamson and Mr. Porter was going
20 around a car and hit head-on. It killed a guy instantly, it was
21 a terrible thing, and I ended up representing Mr. Porter because
22 he was already in our office on the other matter.

23 And, during the time that I was representing him on this, he
24 mentioned that his -- excuse me -- some records had been
25 subpoenaed to the federal grand jury and could I represent him on

1 this and I said, sure, and I actually made inquiry with the U. S.
2 Attorney's Office at that time.

3 A couple of months later maybe, I'm not even sure, maybe
4 just a month later, I got a call from Mr. Roeher. Mr. Roeher and
5 I have been friends for 15 years and he and Mr. Porter have been
6 very good friends over the years, off and on very good, but their
7 businesses -- when he called me and said that the federal folks
8 had come to visit him and could I represent him, and I said, "I
9 have to check. I represent Mr. Porter." He said, "Well, I know
10 Alvis very well."

11 I said, "Does your-all's businesses, with particular, Arch
12 Coal overlap? You don't have any -- you know, do you know
13 anything on him? Would he know anything about your business,"
14 and basically, he says, "No. I hear things from time to time, he
15 hears things, but we don't have similar interests at all,"
16 because Mr. Roeher is involved in the repair of mining equipment;
17 whereas, Mr. Porter's business was excavation, and they were
18 basically completely separate.

19 And so, I immediately called Mr. Porter, asked him if there
20 was any problem, if he foresaw any problem. I did the same with
21 Mr. Roeher. It turns out -- and then I called Thomas Ryan at the
22 time, asked him if he thought there was any conflict, and I said
23 that, you know, basically, they were both prepared to cooperate
24 and so they already knew, I think, that Mr. Porter was, but they
25 knew that Mr. Roeher wanted to.

1 Turns out, Mr. Roeher's partner is Steve Herndon, and Mr.
2 Herndon and Mr. Roeher had talked about coming and cooperating
3 before the Feds ever showed up and Mr. Herndon was adamant about
4 wanting to cooperate, wanting me to represent him. I said, "Boy,
5 this is really getting crazy. Let me check with Mr. Ryan."

6 And what proceeded was, I went back to Mr. Porter, talked to
7 him, same situation. They were in the same kind of business.
8 They knew each other, but didn't have any business relationship
9 that I saw any overlap and, particularly with everyone
10 cooperating, I didn't see a problem.

11 We actually met on March the 23rd in my office with several
12 folks from the federal government for hours and we were there --
13 I think I was there for 12 hours with Mr. Herndon and with Mr.
14 Roeher, with the okay of Mr. Potter, that he thought there would
15 be no conflict. Mr. Ryan thought that there would be no
16 conflict. So that was it, and I thought I was done. I'd
17 actually turned down a couple of others that just -- it was
18 getting crazy.

19 The next day, they were approaching Steve Herndon's other
20 partner on another business, Mr. Scott Ellis, and they asked us
21 not to speak to Scott Ellis, and we didn't. Mr. Ellis came in --

22 THE COURT: Who asked you not to speak to Scott Ellis?

23 MR. DIPIERO: He'd said -- Mr. Ryan, and said, "Don't
24 talk" -- told Mr. Herndon and us not to talk to Mr. Ellis because
25 they wanted to make sure he just came in and told the truth on

1 his own and that's what happened. He came up and spoke with them
2 and, actually, I got a call, I believe, from Mr. Ryan, I could be
3 wrong, but I think it was, saying he's going to need an attorney
4 and, you know, I said, "Well, you know, I've already got these
5 guys," but he said, "Well, he told the exact same story. With
6 him not knowing what we were going to ask and what had been said,
7 he just told the truth."

8 And then, so I said, "If you guys are okay, and if my other
9 clients are okay, then I'll check it out," and so I proceeded to
10 call Mr. Porter, and I called Mr. Roeher, and I called Mr.
11 Herndon, and I spoke to each of them, and this is the way it
12 developed and it was just kind of like he was over in the federal
13 building. He needed -- they wanted him to have an attorney
14 immediately and I said, "Well," I said, "I'll probably save him a
15 lot of money because I was able to not charge everybody the same
16 I might in a normal situation," which is kind of crazy the way
17 this went down, but in truth, I was trying to be very careful.

18 I went back, because someone suggested to me that in my
19 waiver, I didn't have listed that in the event that something
20 occurs that we don't even expect, whereby, we're at a sentencing
21 hearing or something where one witness is -- one client is called
22 as a witness against another client, that could knock us both
23 out. I mean, I could be knocked out of both persons and, even
24 under that circumstance, and with the -- knowing that all of them
25 were cooperating, they still wanted to just -- wanted me to

1 represent them.

2 In each instance, I asked Thomas, Mr. Ryan, do you see --
3 can you perceive of anything that's going to come up and, really,
4 nothing has come up. The guys who worked together just know the
5 same things and they told the same things without -- really,
6 without being in any way checked. It's just come that they --
7 they remember pretty much the same things. Each of them have
8 different information, of course, about certain experiences that
9 they have had, but there's nothing that has come up to where I
10 think I've got a problem, and I don't anticipate a problem the
11 way things have shaken out.

12 And these guys have been -- some of these guys have been
13 friends. They just want to get this thing over with. It's been
14 a terrible experience for them. They're telling the truth.

15 I will state, Judge, this is the first time I've ever been
16 in this situation, but each step of the way, I checked with each
17 client and I checked with Mr. Ryan and I got waivers and I'm glad
18 to tender those to you at this time. I would prefer that they, I
19 don't know, just not be placed on the record or put in the
20 record, but sealed, if they are.

21 THE COURT: Well, I think we're going to have to put
22 them in the record.

23 MR. DIPIERO: Okay.

24 THE COURT: But --

25 MR. DIPIERO: That's fine.

1 THE COURT: For the time -- well, I assume they're
2 identical.

3 MR. DEPIERO: Well, they're not identical, but they're
4 pretty close. I've changed a couple of them.

5 THE COURT: You can go ahead and tender all four of
6 them, if you want.

7 MR. DIPIERO: Actually, Mr. Herndon and Mr. Roeher, I
8 did together. So -- Judge, there were earlier versions, but some
9 of these were signed recently because I changed a little bit.

10 THE COURT: Do you have a copy of this?

11 MR. DIPIERO: Yes.

12 THE COURT: Okay. So let me just make sure I'm clear
13 on the nature of the relationships. Mr. Porter, Mr. Roeher, and
14 Mr. Herndon know each other, friendly, but Mr. Porter's business
15 is entirely separate from Mr. Roeher and Mr. Herndon?

16 MR. DIPIERO: Your Honor, Logan is a small town. They
17 all know each other and have been friendly to some degree. Mr.
18 Ellis -- Mr. Porter has known Mr. Roeher closely over the years,
19 but there's -- their business interests are completely separate.

20 Now Mr. Roeher and Mr. Herndon were business partners.

21 THE COURT: Well, yes. Let me just spin out my
22 understanding of it.

23 MR. DIPIERO: Okay, sure.

24 THE COURT: And you can tell me if I've got it right.

25 MR. DIPIERO: Okay.

1 THE COURT: Roeher and Herndon are business partners?

2 MR. DIPIERO: Yes.

3 THE COURT: So they work together, their financial
4 interests are intertwined?

5 MR. DIPIERO: Yes, sir.

6 THE COURT: And then Herndon and Ellis --

7 MR. DIPIERO: Ellis.

8 THE COURT: -- are business partners in a separate
9 business venture?

10 MR. DIPIERO: Exactly.

11 THE COURT: That Roeher is not involved in?

12 MR. DIPIERO: Exactly.

13 THE COURT: And what kind of business is that?

14 (Counsel & defendant confer)

15 MR. DIPIERO: Mr. Ellis and Mr. Herndon are in a
16 machine shop and Mr. Roeher and Mr. Herndon are in a pump repair
17 shop. One is a machine shop and one is strictly pumps,
18 specialized.

19 THE COURT: So that's different than the business
20 that's at issue in this information?

21 MR. DIPIERO: Yes. Yes.

22 THE COURT: I understood that to be electrical
23 equipment.

24 MR. DIPIERO: Yes. Yes. He's got -- he's got three
25 jobs, actually. This was a separate company than we're talking

1 about here, yes.

2 THE COURT: And these are all vendor companies of one
3 kind or another?

4 MR. DIPIERO: That's correct.

5 THE COURT: To this -- to Mountain -- or whatever the
6 -- Arch Coal?

7 MR. DIPIERO: Arch Coal, yes.

8 THE COURT: Right.

9 MR. DIPIERO: Yes. They're repair businesses; whereas
10 -- or a supply business. In one case, it's a supply business for
11 wood and, of course, as I said earlier, Mr. Porter's case, it's
12 heavy equipment, excavation. It's completely different.

13 THE COURT: Well, I -- I certainly see that there is
14 some separation between Mr. Porter and the others, but Mr.
15 Herndon, Mr. Roeher and Mr. Ellis are pretty closely related --

16 MR. DIPIERO: They are, Your Honor.

17 THE COURT: -- in business. Isn't there the potential
18 that, at sentencing, something could come up where the government
19 could need one of them to testify against the other?

20 MR. DIPIERO: There's the potential, there's any
21 potential, but the likelihood of that is close to nil, Your
22 Honor, from what my experience has been thus far with respect to
23 the cooperation that's been ongoing.

24 THE COURT: Well, I'm at a complete disadvantage here
25 because I know -- compared to what you all know about this case,

1 I know very little.

2 MR. DIPIERO: Sure.

3 THE COURT: So I'm not in a great position to assess
4 this. I look at this as a mine field, frankly, but you might be
5 able to transverse it, nonetheless.

6 Let me hear from the government and see what they have to
7 say about all of this.

8 MS. THOMAS: The United States is in agreement with
9 everything Mr. DiPiero has said regarding the relationships of
10 the businesses. I was not privy, of course, to the conversations
11 he has had with his clients.

12 As to the waivers and so forth, I haven't taken a look at
13 the waivers. However --

14 THE COURT: Would you like to?

15 MS. THOMAS: But I can say, at this point in time, we
16 have no indication that there will be an issue at sentencing. I
17 understand that the Court has hesitation because many things can
18 happen between this plea hearing and sentencing. However, at
19 this time, we have seen comprehensive cooperation amongst all
20 four defendants and don't foresee, at this time, any issue that
21 could arise between now and sentencing.

22 THE COURT: Well, I had the same record -- I had the
23 same representations being made to me by both sides the last time
24 I had this come up and it blew up in our faces.

25 So, Mr. DiPiero, I'm going to have to make these a part of

1 the record.

2 MR. DIPIERO: That's fine.

3 THE COURT: Because this just has to be in the record.

4 MR. DIPIERO: That's fine, Your Honor.

5 THE COURT: Why would I seal these?

6 MR. DIPIERO: You don't need to, Your Honor. That's
7 okay.

8 THE COURT: All right. Well, I'm going to go ahead --
9 I'm going to -- I'll be inquiring along these same lines. It
10 might not take as much time because I've now probably heard just
11 about everything I'm going to hear, but I'm going to be making
12 inquiries at all four plea hearings. So I'll go ahead and make
13 these a part of the record for this hearing and we'll do it, as
14 well, for the other hearings, as well.

15 I'm going to ask a few more questions about this just to
16 complete the record.

17 Mr. Roeher, have you been listening to this conversation and
18 heard everything that your attorney just said?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And did you discuss these matters with your
21 attorney prior to this hearing?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you understand that there is some danger
24 in having your lawyer represent someone else who, in a case as
25 closely related to yours, in that your attorney's loyalty should

1 be exclusively to you, and that for reasons we might not even
2 foresee today, that his loyalty to his other clients might become
3 -- we might encounter a conflict between his loyalty to his other
4 clients and his loyalty to you? Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Has your attorney explained that and this
7 whole issue to you?

8 THE DEFENDANT: Yes, sir, he has.

9 THE COURT: Did he answer any questions that you had
10 about it?

11 THE DEFENDANT: Yes. Yes, sir, he has.

12 THE COURT: All right. And, notwithstanding our
13 conversation today, do you still want Mr. DiPiero to continue to
14 represent you in this case?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you understand that if you don't want
17 Mr. DiPiero to represent you, the Court will continue this matter
18 and allow you to get another attorney?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And, if the Court were to find that you
21 were indigent, in other words, unable to afford an attorney, an
22 attorney would be appointed for you?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And, knowing that, do you still want to
25 proceed with Mr. DiPiero?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And is this your signature that appears on
3 this Waiver of Conflict of Interest Form?

4 THE DEFENDANT: Yes, Your Honor, it is.

5 THE COURT: All right. And you've read the form,
6 including the handwritten portion of it?

7 THE DEFENDANT: Yes, Your Honor, I have.

8 THE COURT: Actually, your signature appears on it
9 twice, doesn't it?

10 THE DEFENDANT: Yes. Yes, Your Honor, it does.

11 THE COURT: And did Mr. DiPiero go over this form with
12 you in detail?

13 THE DEFENDANT: Yes, Your Honor, he did.

14 THE COURT: Did he answer any questions that you had
15 about the form?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did you understand all of the matters
18 contained in the form?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Any further inquiry either side
21 believes that I should make regarding this matter?

22 MS. THOMAS: No, Your Honor.

23 MR. DIPIERO: No, Your Honor.

24 THE COURT: All right. I'll go ahead, as I indicated,
25 and have the forms filed, and we'll go ahead and proceed and,

1 hopefully, this will work out. I -- again, I've only had this
2 happen once before. It didn't work out in that case, but part of
3 the reason I'm going to go forward is because I know Mr. DiPiero
4 to be a thoughtful, careful and experienced lawyer, and so -- and
5 I have no doubt that he has sized this situation up in every
6 direction that he can think of and it appears to have worked out
7 in spite of the fact that, representing four different
8 defendants, three of which are all in business together, seems to
9 me to be a perilous situation from a conflict standpoint, but
10 we'll go ahead move forward with the plea hearing today.

11 All right. Mr. Roeher, let me begin by asking you, how old
12 are you, sir?

13 THE DEFENDANT: 52.

14 THE COURT: And can you briefly describe your
15 educational background?

16 THE DEFENDANT: I'm a high school graduate.

17 THE COURT: And can you read and write and understand
18 the English language?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Can you briefly describe your work
21 experience?

22 THE DEFENDANT: I've been a route salesman for 30 --
23 over 30 years to the coal mines.

24 THE COURT: Have you taken any medicine or drugs or
25 consumed any alcoholic beverages in the last 24 hours?

1 THE DEFENDANT: Yes, Your Honor. I have a list of the
2 medications I take.

3 THE COURT: All right. I'm going to need to know what
4 those are. Do you want to just show me the list?

5 Mr. DiPiero, do you want to just tender the list to me?

6 MR. DIPIERO: Yes, Your Honor.

7 THE COURT: All right. Let's go through them one by
8 one. I'm going to want to know if you have taken them in the
9 last -- have you taken all of these in the last 24 hours?

10 THE DEFENDANT: Yes, Your Honor, I have.

11 THE COURT: Either last evening or this morning?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: I'm going to go through each one of them
14 and ask you what they're for.

15 Wellbutrin?

16 THE DEFENDANT: It's for bipolar disorder.

17 THE COURT: All right. Lamictal?

18 THE DEFENDANT: For the same.

19 THE COURT: All right. Carbatrol?

20 THE DEFENDANT: For the same.

21 THE COURT: Xanax?

22 THE DEFENDANT: It's for a -- it's for the same.

23 THE COURT: All right. Fenofibrate? I may not be
24 pronouncing that right.

25 THE DEFENDANT: Yes. It's something to do with blood

1 pressure and that type of thing.

2 THE COURT: Zocor?

3 THE DEFENDANT: That's just a cholesterol medicine.

4 THE COURT: All right. Aspirin is not a prescription
5 medication. And Ambien is a sleep aid, correct?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. To the best of your -- and did
8 you -- you took the Ambien last night?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: About what time?

11 THE DEFENDANT: 10:00.

12 THE COURT: All right. To the best of your knowledge,
13 as you sit here today, are you suffering from any side effects
14 from any of those medications that would in any which affect your
15 ability to fully participate in this hearing today?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: All right. Have you ever been treated for
18 any mental illness or addiction to drugs of any kind?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And have you been -- can you give me a
21 little bit of detail about that?

22 THE DEFENDANT: It was in 2003, I think, was when it
23 started. I attended a rehabilitation in Florida, 30-day rehab
24 program, and I've been clean since 2004.

25 THE COURT: And what was that for?

1 THE DEFENDANT: Cocaine.

2 THE COURT: All right. Any other mental health or drug
3 treatment?

4 THE DEFENDANT: No, sir.

5 THE COURT: Some of the medications that you described,
6 that you indicated you were taking, are -- appear to be mental
7 health-related. Are those prescribed by your family physician?

8 THE DEFENDANT: No. They're prescribed by a
9 psychiatrist that I do still see.

10 THE COURT: Okay, and how long have you been seeing a
11 psychiatrist?

12 THE DEFENDANT: For probably seven or eight years.

13 THE COURT: Okay. Have you had any inpatient
14 treatment?

15 THE DEFENDANT: No, sir. No.

16 THE COURT: All right. And you indicated that you had
17 a -- well, you indicated that the medications were for bipolar
18 disorder. Do you have any other -- did the psychiatrist diagnose
19 you with that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you had any other psychological or
22 psychiatric diagnoses?

23 THE DEFENDANT: No, sir.

24 THE COURT: All right. Do you know where you are and
25 why you are here today?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And do you have any hearing impairment or
3 other disability which would prevent you from fully participating
4 in this hearing today?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: And, Mr. DiPiero, do you have any reason to
7 question the competence of your client?

8 MR. DIPIERO: None, Your Honor. None at all, Your
9 Honor.

10 THE COURT: All right. I have received the original of
11 the plea agreement.

12 Mr. Roeher, is that your signature on the tenth and final
13 page of the plea agreement?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And are those your initials that appear on
16 the other pages of the plea agreement?

17 THE DEFENDANT: Yes, they are, Your Honor.

18 THE COURT: Now, there's a handwritten change in
19 Paragraph 35(a), which is on the first page and, on Paragraph
20 3(c), which is on the top of Page 2 where the maximum penalties
21 were changed by handwritten notation, are those your initials
22 that appear next to those two changes?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And you agree with those two changes?

25 THE DEFENDANT: I do, yes.

1 THE COURT: And have you read and reviewed with your
2 attorney each of the 20 paragraphs of the plea agreement and the
3 two exhibits attached to it?

4 THE DEFENDANT: Yes, Your Honor, I have.

5 THE COURT: And do you wish to have the various terms
6 of the plea agreement orally stated on the record or do you
7 believe that that is unnecessary?

8 THE DEFENDANT: I believe that is unnecessary.

9 THE COURT: All right. And do you understand and agree
10 with all of the terms and provisions contained in the plea
11 agreement?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Mr. DiPiero, have you reviewed each of the
14 20 paragraphs of the plea agreement and its exhibits with your
15 client?

16 MR. DIPIERO: I have, Your Honor.

17 THE COURT: And, Mr. DiPiero and Ms. Thomas, is there
18 any reason why either of you believe that the various terms of
19 the plea agreement should be orally stated on the record?

20 MS. THOMAS: No, Your Honor.

21 MR. DIPIERO: I don't think so, Your Honor.

22 THE COURT: All right. Nonetheless, Mr. Roeher, there
23 are several provisions of the plea agreement I want to discuss
24 with you, starting with the section entitled "Restitution," which
25 begins on Page 2 and runs over onto Page 3.

1 Now that section recites that you agree that you owe
2 restitution to the IRS in the amount of \$22,098.89 and that you
3 agree to pay that with interest. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And, in connection with that, in Section
6 5(e) of the plea agreement, there is an appeal waiver with regard
7 to that, and let me just first ask you if you understand that a
8 "waiver" is a legal term that means you are giving something up?
9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. So, in Section 5(e), do you
12 understand that you agree to waive your right to appeal any order
13 imposing restitution unless the amount of restitution imposed is
14 greater than the amount that's recited at the top of Section 5?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that? All right.

17 MR. DIPIERO: Your Honor, for the record, I believe he
18 paid that this week.

19 THE COURT: All right. Very well. Do you have a
20 receipt you want to put into the record?

21 MR. DIPIERO: I don't have that at this point, no, Your
22 Honor.

23 THE COURT: All right. We can deal with that at
24 sentencing.

25 MR. DIPIERO: Okay.

1 THE COURT: I appreciate that information.

2 And do you understand that a restitution -- Mr. Roeher, that
3 a restitution order will be used by the IRS as the basis for a
4 civil assessment?

5 THE DEFENDANT: Yes.

6 THE COURT: And that's set forth in -- for the record,
7 in Section 6 of the plea agreement, which is on Page 3.

8 Pardon me just a second.

9 (Pause)

10 All right. Next, I want to talk with you regarding Section
11 7, which begins on Page 3 and runs through Page 4, and over to
12 Page 5. It's entitled "Forfeiture".

13 Now, you agree in this section, and specifically Section
14 7(c), to pay to the IRS an amount in forfeiture, which means the
15 government takes certain property, and this is separate from
16 restitution. You agree to pay \$35,170.60. Do you understand
17 that?

18 THE DEFENDANT: Yes, Your Honor. I've already paid
19 that.

20 THE COURT: All right. And do you understand that in
21 subsection (g) of Section 7, which is at the top of Page 5, that
22 you waive any defenses to any forfeiture action related to this
23 matter? Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. All right. Next, I want to

1 refer you to Section 13 of the plea agreement, which begins on
2 Page 6 and runs over onto Page 7, and that section is entitled
3 "Stipulation of Facts and Wavier of Federal Rules of Evidence
4 410".

5 Now this section relates to a couple of different matters,
6 the first of which is the Stipulation of Facts, which is attached
7 to the plea agreement as Exhibit B, and I want to turn your
8 attention to that document now. That is a three-page document
9 and, on the third page, is that your signature which appears
10 there?

11 THE DEFENDANT: Yes, Your Honor, it is.

12 THE COURT: And have you read the Stipulation of Facts?

13 THE DEFENDANT: Yes, sir, I have.

14 THE COURT: And do you agree that all of the facts
15 contained in the stipulation are true?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. A little bit about what will be
18 happening from here on out. I will be asking the probation
19 officer to prepare a Presentence Investigation Report. That
20 report will contain detailed recommended factual findings
21 regarding this offense and your background, among other things.

22 Ultimately, at sentencing, I will make factual findings
23 regarding -- based at least in part on the recommendations
24 contained in the Presentence Report.

25 Now you and the government have reached an agreement

1 regarding certain facts contained in this stipulation, but I want
2 you to understand that in this process, neither the probation
3 officer, nor this Court, are bound by that Stipulation of Facts.
4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you further understand that if I
7 make findings of fact at sentencing that are different from of
8 inconsistent with the facts contained in the stipulation, you
9 will still be bound by your guilty plea and would have no right
10 to withdraw it? Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. The other matter addressed in
13 Section 13 is a waiver of Federal Rule of Evidence 410. Now Rule
14 410 generally provides that information or documents regarding
15 plea negotiations, and this stipulation of fact would fall into
16 that category, is generally not admissible at trial. In other
17 words, the government can't use that sort of thing against you at
18 trial.

19 However, under this agreement, if you withdraw from the plea
20 agreement or it's no longer any good as a result of your
21 violation of one or more of its terms and there is a subsequent
22 trial, then under this waiver, the government would be allowed to
23 present the Stipulation of Facts in its chief or for other
24 purposes at that trial. Do you understand that waiver?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. Next, I want to refer you to
2 Section 14 of the plea agreement, which is entitled -- it's on
3 Page 7. It's entitled "Agreement on Sentencing Guidelines".

4 Now, before we get into that, I want to talk with you a
5 little bit about the federal sentencing guidelines and, first, I
6 want to ask you, has your attorney talked with you about the
7 federal sentencing guidelines and how they generally work?

8 THE DEFENDANT: Yes, sir, he has.

9 THE COURT: And did he show you that chart in the back
10 of the guidelines book?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Well, working from that chart, I want to
13 have a similar discussion with you. If you'll recall from the
14 chart, on the left side of the chart, there's a series of numbers
15 that run down the page from low to high, and those are offense
16 levels, and the offense level is calculated by starting with a
17 Base Offense Level, which is a starting point, and then the
18 offense level can be adjusted upward or downward from there based
19 on the facts and circumstances in the case to arrive at an
20 adjusted offense level, and then consideration is generally given
21 to a reduction for acceptance of responsibility. Has your
22 attorney talked with you about that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. And then you generally arrive
25 at a Total Offense Level. Then you go up to the top of the chart

1 and there are six different criminal history categories and you
2 would fall into one of those, depending on the number, if any, of
3 points assigned to any prior convictions that you may have.

4 Then you combine the criminal history category with the
5 Total Offense Level and arrive at a point in the chart that gives
6 a range of months of imprisonment. Certain parts of the chart
7 allow for certain alternatives to imprisonment. Do you
8 understand all of this so far?

9 THE DEFENDANT: Yes, sir

10 THE COURT: Has your attorney explained all of this to
11 you so far?

12 THE DEFENDANT: Absolutely. Yes, sir.

13 THE COURT: All right. Once we arrive at that range of
14 months -- and I have the authority to sentence you within that
15 range. I would also have the authority to sentence you outside
16 of that range, either above it or below it. If I do that based
17 on factors identified in the guidelines themselves, that's
18 generally known as a departure. If I do that based on factors
19 outside of the guidelines, that's generally known as a variance;
20 in other words, sentencing you outside -- above or below the
21 guideline range.

22 Do you understand all of these things I've told you about
23 the guidelines?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And has your attorney gone over all of them

1 with you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Well, with of that in mind
4 then, in Section 14, there is an agreement that you've reached
5 with the government regarding one or more provisions of the
6 federal sentencing guidelines. This is similar to the
7 Stipulation of Facts in that the probation officer, in the
8 Presentence Report, will include a recommended guideline
9 calculation and, ultimately at sentencing, I will make guideline
10 findings based at least in part on that recommendation.

11 However, I want you to understand that even though you have
12 reached an agreement with the government on the guidelines
13 contained in Section 14 of the plea agreement, neither the
14 probation officer, nor this Court, are bound by that agreement on
15 the guidelines. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And do you understand that if I make
18 guideline findings at sentencing that are different from or
19 inconsistent with this agreement on the guidelines, you will
20 still be bound by your guilty plea and would have no right to
21 withdraw it? Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. Next, I want to refer you to
24 Section 15 of the plea agreement, which is entitled "Waiver of
25 Appeal and Collateral Attack". Now this section relates to a

1 couple of different procedures that I want to go over with you
2 briefly.

3 An "appeal" is a procedure by which party to case before a
4 District Court like this one and, in a criminal case, it is often
5 the defendant, goes to the Court of Appeals, which is the next
6 level up of the court system, and argues that certain errors or
7 mistakes may have taken place in their criminal case before the
8 District Court.

9 And a collateral attack, which is sometimes referred to as a
10 "habeas corpus petition", is a separate civil case that a
11 defendant may file after their criminal case is over, in which
12 they may also argue that certain errors or mistakes may have
13 taken place in their criminal case before the District Court.

14 Now, do you understand those two procedures, at least as
15 I've briefly described them to you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. One of the things, before we
18 get into this, is I want to talk with you about the two phases of
19 a criminal case.

20 The first phase of a criminal case is the -- is the portion
21 of the case where guilt or innocence is determined. Sometimes
22 that's by a trial, much more often, it's by a guilty plea like
23 what we're doing today. That phase of the case includes the very
24 beginning of the case up to the point of a plea hearing in this
25 case.

1 The second phase of the case then is the penalty phase where
2 the penalty for the crime is determined, and that concludes with
3 the sentencing hearing at the end of the case.

4 Now do you understand the two phases of a criminal case as
5 I've described them?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. With all of that in mind then,
8 Section -- the first paragraph of Section 15 contains an appeal
9 wear and I want to go over that with you now.

10 Do you understand that you have the right to appeal your
11 conviction and any sentence of imprisonment, fine or term of
12 supervised release, or the manner in which the sentence was
13 determined on any ground whatsoever, with one exception, you may
14 appeal any sentence that is greater than the maximum penalty set
15 forth by statute? Do you understand that waiver?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Anything about it that you don't understand
18 or that you have questions about?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: All right. Now, in the second paragraph of
21 Section 15, do you also understand that you may not file a later
22 civil proceeding, sometimes referred to as a "collateral attack"
23 or a "habeas corpus petition", challenging your plea, conviction
24 or sentence?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And, finally, do you understand that you
2 are in no event waiving your right to claim ineffective
3 assistance of counsel either on appeal or by collateral attack?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: All right. Finally, I want to refer you to
6 Section 16 of the plea agreement, which appears on Page 8, and is
7 entitled "Waiver of FOIA and Privacy Right".

8 Now this waiver means you can't go back and seek documents
9 or other information about this case from the government even
10 with a Freedom of Information Act request. Do you understand
11 that waiver?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. DiPiero, have you thoroughly reviewed
14 the plea agreement with your client?

15 MR. DIPIERO: More than once, Your Honor.

16 THE COURT: And do you believe that he fully
17 understands the various terms and provisions of the plea
18 agreement, including the waivers and other matters that I have
19 gone over with him this morning?

20 MR. DIPIERO: Yes, Your Honor.

21 THE COURT: And, Mr. Roeher, have you reviewed the plea
22 agreement in detail with your attorney?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you believe that you have had
25 adequate time to discuss your case fully with your attorney?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Has your attorney answered any questions
3 that you have had about your case?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: And, Mr. DiPiero, during your
6 representation of the defendant, has he been cooperative?

7 MR. DIPIERO: Yes, Your Honor.

8 THE COURT: All right. And, Mr. Roeher, has anything
9 further been agreed to, either orally or in writing, that is not
10 contained in the plea agreement?

11 THE DEFENDANT: No, Your Honor, not that I'm aware of.

12 THE COURT: All right. I will order that the plea
13 agreement be filed.

14 I will find that the defendant understands and agrees with
15 the terms contained in the plea agreement.

16 I will defer accepting or accepting the plea agreement until
17 sentencing, after the Presentence Report has been received and
18 considered.

19 Now, Mr. Roeher, have you received and read and reviewed
20 with your attorney the information, proposed information, or
21 charging document in this case?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And do you understand the charge contained
24 in the information?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Would you like me to read the information
2 to you or will you waive the reading of the information?

3 THE DEFENDANT: I will waive it.

4 THE COURT: All right. As I understand it, you will be
5 pleading guilty to a single-count information which charges you
6 with filing a false tax return in violation of 26 U. S. C.
7 Section 7206(1). Now I want to go over that charge and that
8 statute with you in just a little bit more detail.

9 Section 7206(1) provides in pertinent part that:

10 "Any person who willfully makes and subscribes any return,
11 statement, or other document, which contained or is -- which
12 contains or is verified by a written declaration that is made
13 under the penalties of perjury, and which does not -- and which
14 he does not believe to be true and correct as to every material
15 matter shall be guilty of a crime against the United States."

16 Now, in order to prove that charge against you, the
17 government would have to prove the following elements of that
18 crime, each beyond a reasonable doubt, and they are:

19 First, that you made and subscribed and filed a tax return
20 containing a written declaration;

21 Second, that the tax return was made under penalties of
22 perjury;

23 Third, that you knew the return was not true and correct as
24 to every material matter;

25 And, finally, that you acted willfully.

1 Now, I want to share with you some definitions that apply to
2 what I have just told you.

3 To "subscribe" means to sign one's name on a document.

4 A "material matter" is any statement that has a natural
5 tendency to influence or impede the IRS in determining the
6 correctness of a tax return and, in all cases, a correct amount
7 of income is clearly a material matter.

8 The "test of materiality" is whether a particular item must
9 be reported in order that the taxpayer estimate and compute his
10 tax correctly.

11 To "act willfully" means to act voluntarily and deliberately
12 and with the intention to violate a known legal duty.

13 "Willfulness" requires the government to prove that the law
14 imposed a duty on defendant, that the defendant knew of this
15 duty, and that he voluntarily and intentionally violated the law.

16 Is there any objection to the elements of the offense as I
17 have described them?

18 MS. THOMAS: No, Your Honor.

19 MR. DIPIERO: No, Your Honor.

20 THE COURT: All right. Very well.

21 Now, Mr. Roeher, I want to go over with you the maximum and
22 any minimum sentences you may face as a result of your guilty
23 plea, and that is a maximum term of imprisonment of three years;
24 a maximum fine of \$250,000.00, or twice the gross pecuniary gain
25 or loss resulting from your conduct, whichever is greater; and a

1 maximum term of supervised release of one year.

2 A mandatory special assessment of \$100.00 would be required,
3 which your attorney is now holding up a receipt, which I'm
4 assuming indicates you've already paid that, and you may make
5 that -- we'll make that a part of the record. You can tender it
6 after the hearing.

7 MR. DIPIERO: Yes, sir.

8 THE COURT: But we will make that a part of the record
9 for this proceeding.

10 And restitution may be ordered if it is found to be
11 applicable, as it appears to be and, as your attorney indicates,
12 you have already paid, which I appreciate.

13 Next, I want to return to our discussion of the federal
14 sentencing guidelines. They are advisory, meaning they're not
15 mandatory or don't have to be followed, but they'll nevertheless
16 play an important role in your case.

17 This Court will consider the factors set forth in 18 U. S.
18 C. Section 3553(a), including the advisory guideline factors in
19 determining the appropriate sentence in your case.

20 I now want to ask you some questions that will help me to
21 understand your understanding of the guidelines.

22 Have you discussed with your attorney the various factors
23 which apply in determining what the sentence in your case may be
24 under the advisory guidelines?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you understand that on this
2 single-count information, you cannot in any event receive a
3 greater sentence than the statutory maximum that I explained to
4 you a few moments ago?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: Do you understand the Court will not
7 determine the sentence for your case until a later date, when a
8 Presentence Report has been completed, and both you and
9 government have had an opportunity to challenge the facts and
10 analysis reported by the probation officer?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you also understand that under a concept
13 known as "relevant conduct", this Court, in determining the Total
14 Offense Level for sentencing purposes under the guidelines, may
15 take into account any conduct, circumstances or injuries relevant
16 to the crime of which you may be convicted?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that after the Court has
19 determined what advisory guidelines apply to your case, the Court
20 has the authority to vary or depart from the advisory guidelines
21 and impose a sentence that is more severe or less severe than the
22 sentence called for by the guidelines?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that in determining your
25 sentence, the Court is obligated to calculate the applicable

1 sentencing guideline range, and to consider that range, possible
2 departures under the guidelines, and other sentencing factors
3 under 18 U. S. C. Section 3553(a)?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: Do you understand that parole has been
6 abolished and, if you're sentenced to prison, you will not be
7 released on parole?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand if the Court accepts your
10 plea of guilty and the sentence ultimately imposed upon you is
11 more severe than you had hoped for or expected, you will still be
12 bound by your guilty plea and would have no right to withdraw it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand if you plead guilty to
15 this single-count information, which charges you with a felony,
16 you may lose important civil rights, such as the right to vote;
17 the right to serve on a jury; and the right to hold -- the right
18 to hold public office; and the right to own or possess a firearm?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: All right. Next, Mr. Roeher, I want you to
21 understand that you have the right to have this matter presented
22 to a federal grand jury. Now, I want to explain that process to
23 you briefly.

24 A grand jury is composed of at least 16 and not more than 23
25 persons, and at least 12 grand jurors must find that there is

1 probable cause to believe that you committed the crime with which
2 you are charged before you may be indicted.

3 Now do you see any benefit of having this case presented to
4 a federal grand jury?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Do you see any prejudice or disadvantage to
7 you of not having the case presented to a grand jury?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: All right. Your counsel has been provided
10 with a Waiver of Indictment Form and I want to go over that with
11 you now. It contains what we call the style of the case, United
12 States of America versus Gary L. Roeher, the criminal action
13 number, it's entitled "Waiver of Indictment", and it states as
14 follows:

15 "I, Gary L. Roeher, am accused of violating 26 U. S. C.
16 Section 7206(1). I have been advised of the nature of the
17 charge, of the proposed information, and of my rights. I hereby
18 waive in open court prosecution by indictment and consent that
19 the proceeding may be by information rather than by indictment."

20 And there's space for you to sign and date, space for your
21 counsel to sign, and space for me to sign.

22 Do you understand what I just read to you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is there anything about the waiver of
25 indictment procedure that you don't understand or that you have

1 questions about?

2 THE DEFENDANT: No, sir.

3 THE COURT: If you're prepared to do so then, I will
4 ask you to execute the Waiver of Indictment Form by signing and
5 dating it, then I will ask your counsel to sign it and tender it
6 to the Court.

7 All right. I would note for the record that the defendant
8 has signed and dated the Waiver of Indictment Form. It has been
9 endorsed by his counsel. I am now signing it, and I will order
10 that it be made a part of the record for this proceeding.

11 Mr. Roeher, I next want to talk with you regarding your
12 trial and constitutional rights.

13 You have the right to plead not guilty and maintain a not
14 guilty plea throughout these proceedings, including at trial.

15 You have the right to be represented by counsel.

16 You have the right to a speedy and public trial by a jury
17 composed of citizens of this district.

18 You have the right to confront and have your attorney cross
19 examine witnesses and have your attorney move to suppress any
20 evidence he believes was illegally or unconstitutionally
21 obtained.

22 You have the right not to testify or otherwise incriminate
23 yourself and your exercise of this right cannot be held against
24 you.

25 Do you understand these rights so far?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have the right to have the government
3 come in here and prove its case beyond a reasonable doubt.

4 The jury's verdict would have to be unanimous.

5 You have the right to present evidence on your own behalf.

6 You have the right to testify at trial on your own behalf.

7 And you have the right to subpoena witnesses to testify for
8 you.

9 Do you understand all of these rights?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Any of them that you don't understand or
12 that you have questions about?

13 THE DEFENDANT: No, sir.

14 THE COURT: And, other than your right to counsel, do
15 you understand that you will be giving up these rights by
16 entering a plea of guilty?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand that once you have
19 entered a plea of guilty, there is not going to be any trial, no
20 jury verdict, and no findings of innocence or guilt based upon
21 disputed evidence presented to me or to a jury?

22 THE DEFENDANT: Yes, Your Honor, I understand.

23 THE COURT: And do you believe that you fully
24 understand the consequences of entering a plea of guilty?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And, Mr. DiPiero, having reviewed this case
2 and the plea agreement in detail with your client, do you believe
3 that he fully understands his rights and fully understands the
4 consequences of entering a plea of guilty?

5 MR. DIPIERO: Yes, Your Honor.

6 THE COURT: All right. I note that there is a
7 Stipulation of Fact. Does the -- it appears to address the
8 elements of the offense. Does counsel have any objection to the
9 Court utilizing the stipulation as the factual -- or in its
10 consideration of the factual basis for the plea?

11 MS. THOMAS: No, Your Honor.

12 MR. DIPIERO: No, Your Honor.

13 THE COURT: All right. I will nonetheless defer a
14 factual basis finding until sentencing, but will proceed with the
15 guilty plea.

16 Mr. Roeher, will you please stand?

17 As to the charge contained in the single-count information,
18 how do you plead, sir, guilty or not guilty?

19 THE DEFENDANT: Guilty, sir.

20 THE COURT: You may be seated.

21 Your counsel has been provided with a written Plea of Guilty
22 Form. I would ask that you go over that with him, if necessary,
23 sign and date it. Then, I will ask him to sign it and tender it
24 to the Court.

25 All right. I'll note for the record that the defendant has

1 signed and dated the written Plea of Guilty Form. It has been
2 witnessed by his counsel and I will order that it be made a part
3 of the recording for this proceeding.

4 Mr. Roeher, is this plea the result of any threat or
5 coercion or harassment of you by anyone?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Is it the result of any promise or
8 inducement other than those contained in the plea agreement?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Are you pleading guilty to protect anyone?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: All right. Are you acting voluntarily and
13 of your own free will in entering this guilty plea?

14 THE DEFENDANT: I am, Your Honor.

15 THE COURT: Has anyone promised or predicted the exact
16 sentence which will be imposed upon you in this matter?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Do you understand that no one could know at
19 this time the exact sentence which will be imposed?

20 THE DEFENDANT: Excuse me?

21 THE COURT: Do you understand that no one could know at
22 this time the exact sentence which will be imposed?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Has your attorney adequately represented
25 you in this matter?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Has your attorney left anything undone
3 which you think should have been done?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Have you or your attorney found any defense
6 to the charge contained in the information?

7 THE DEFENDANT: Excuse me?

8 THE COURT: Have you or your attorney found any defense
9 to the charge contained in the information?

10 THE DEFENDANT: No.

11 THE COURT: Are you, in fact, guilty of the crime
12 charged in the information? In other words, did you do it?

13 THE DEFENDANT: Yes, Your Honor, I did.

14 THE COURT: I want to clarify one thing. On this tax
15 return that you filed, you -- you understood that this -- as I
16 understand the stipulation, you claimed -- you claimed this
17 expense as a business expense?

18 THE DEFENDANT: I did, yes, Your Honor.

19 THE COURT: And when, in fact, it was a personal
20 expense?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And you understood at the time that that
23 should not have been claimed as a business expense?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And you did so anyway?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And, just so I'm clear, you understood that
3 the -- you might not have known the exact tax provision, but the
4 tax law required you to not report that as a business expense?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. I will find that the defendant
7 is competent and capable of entering an informed plea; that the
8 plea is freely and voluntarily made; that the defendant
9 understands the nature of the charges and is aware of the
10 consequences of the plea.

11 I will find that the defendant understands his rights and
12 understands that he is giving up these rights by entering a plea
13 of guilty.

14 I will defer a factual basis finding, but I will accept the
15 plea of guilty to the information, and will defer adjudging the
16 defendant guilty until the time of sentencing.

17 I will ask the probation officer to prepare a Presentence
18 Investigation Report.

19 Mr. Roeher, it's important to cooperate fully with the
20 probation officer in the preparation of the Presentence Report.
21 If you fail to cooperate fully and truthfully with the probation
22 officer, you could be subject to an enhancement of your sentence
23 or the forfeiture of certain sentence reductions for which you
24 might otherwise be eligible.

25 It is also important that you not commit any crimes between

1 now and sentencing, as there may be additional punishments
2 imposed for committing additional crimes.

3 I will set this matter for sentencing on October 15th, 2014
4 at 2:00 p.m. I will put other presentence dates in my post-plea
5 order.

6 What's the government's position with regard to bond?

7 MS. THOMAS: No objection.

8 THE COURT: All right. I assume you share that
9 position, Mr. DiPiero?

10 MR. DIPIERO: Absolutely.

11 THE COURT: I will allow the defendant to be released
12 today on a ten thousand dollar unsecured bond under the standard
13 conditions and/or those listed in the Pretrial Services Report,
14 and I will go ahead and sign my part of the paperwork right now
15 and, Mr. DiPiero, you and your client can take care of the rest
16 after the conclusion of the hearing.

17 MR. DIPIERO: May I have one second, Your Honor, with
18 him?

19 THE COURT: You may.

20 (Counsel confers with defendant)

21 MR. DIPIERO: Your Honor, Mr. Roeher has been involved
22 with youth basketball for many years and he coaches a team that
23 goes -- I guess they're going once to Tennessee and once to North
24 Carolina. I was just wondering if he would be able to take his
25 team to these places to coach on these weekends. These are big

1 things that they build up and -- each year to be able to do.

2 THE COURT: Is that this summer?

3 MR. DIPIERO: Yes, sir.

4 THE COURT: Is there any objection?

5 MS. THOMAS: No objection.

6 THE COURT: All right. Just -- the defendant needs to
7 let the probation officer know in advance the travel plans, when
8 he's going and when he's coming back, et cetera, and as long as
9 the probation officer is fully informed in advance, that
10 shouldn't be a problem.

11 MR. DIPIERO: Thank you, sir.

12 THE COURT: All right. Is there anything else we need
13 to take up in this case?

14 MS. THOMAS: No, Your Honor.

15 MR. DIPIERO: No, Your Honor.

16 THE COURT: All right. We'll start the next hearing in
17 about five, ten minutes.

18 (Proceedings concluded at 10:18 a.m., July 9, 2014.)

19
20 CERTIFICATION:

21 I, Ayme A. Cochran, Official Court Reporter, certify that
22 the foregoing is a correct transcript from the record of
23 proceedings in the matter of United States of America, Plaintiff
24 v. Gary L. Roeher, Defendant, Criminal Action No. 2:14-cr-00109,
25 as reported on July 9, 2014.

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s/Ayme A. Cochran, RMR, CRR

November 12, 2014

Ayme A. Cochran, RMR, CRR

DATE